SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 330

THE UNITED STATES, PETITIONER
vs.
AUTOMATIC WASHER COMPANY

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In Court of Claims

No. 42525

AUTOMATIC WASHER COMPANY, A CORPORATION, PLAINTIFF

vs.

THE UNITED STATES, DEFENDANT

I. *Petition*

Filed October 14, 1933

To the Honorable, the Chief Justice and the Judges of the Court of Claims:

The claimant, Automatic Washer Company, a corporation, respectfully represents:

I

That it is, and was at all times hereinafter mentioned, a corporation duly created by law and having its principal office and place of business in the City of Newton in the State of Iowa, where it is engaged in the manufacture and sale of electric washing machines.

2 II

That by a written agreement dated June 22, 1928, and modified by certain subsequent agreements, plaintiff acquired, in September 1928, from a corporation known as the Automatic Electric Washer Company, all of the assets, franchises and other properties of every kind and description of the said Automatic Electric Washer Company. Said agreement provided in part that in consideration of the conveyance of said property and assets to it, plaintiff would deliver to the stockholders of the Automatic Electric Washer Company thirty-four thousand, five hundred and thirty-eight (34,538) shares of plaintiff's convertible preference stock of no par value and one hundred and forty thousand (140,000) shares of its common stock of no par value.

Pursuant to said agreement, plaintiff issued and delivered to the stockholders of the said Automatic Electric Washer Company and their nominee or attorney-in-fact as hereinafter set out, the said 34,538 shares of preference stock and 140,000 shares of common stock and duly paid thereon to the proper Collector of Internal Revenue the stamp taxes provided for by Schedule A(2) of Title VIII of the Revenue Act of 1926.

Of said shares thus issued and delivered, the 34,538 shares of preference stock and 40,000 of the 140,000 shares of common stock were issued and delivered, upon the instructions of the stockholders of the said Automatic Electric Washer Company to one H. E. Nelson, as nominee and attorney-in-fact for said stockholders, and were by him transferred and delivered, pursuant to the terms of the agreement aforesaid, to a firm of investment bankers who paid
3 to the said Nelson an agreed sum of money which was, by the said Nelson, distributed pro rata to the stockholders of the Automatic Electric Washer Company. That the stamp tax provided for by Schedule A(3) of Title VIII of the Revenue Act of 1926 was duly paid upon said transfers to said investment bankers.

III

That Schedule A of Title VIII of the Revenue Act of 1926 imposes liabilities for stamp taxes, among others, upon

"2. Capital stock, issued: On each original issue, whether on organization or reorganization, of certificates of stock, or of profits, or of interest in property or accumulations, by any corporation, on each $100 of face value or fraction thereof, 5 cents: Provided, That where a certificate is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of $100 per share, in which case the tax shall be 5 cents on each $100 of actual value or fraction thereof, or unless the actual value is less than $100 per share, in which case the tax shall be 1 cent on each $20 of actual value, or fraction thereof.

"3. Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers, of legal title to shares of certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling
4 the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100.00 of face value or fraction thereof, 2 cents, and where such shares are without par or face value the tax shall be 2 cents on the transfer or sale or agreement to sell on each share."

IV

That thereafter, to wit, during the year 1930, the Commissioner of Internal Revenue demanded of petitioner additional stamp taxes in respect of the foregoing transactions in the sum of $1,593.63 based upon the alleged claim that the said stockholder of the Automatic Washer Company had transferred to the said Nelson, in connection with the foregoing transactions, their so-called "right to receive" the said shares issued to the said Nelson by petitioner and that said

alleged transfer of the said alleged right to receive was taxable under the provisions of Schedule A(3) of Title VIII of the Revenue Act of 1926. That petitioner, under duress and threat of distraint, paid to the Collector of Internal Revenue, under protest, on the 4th day of May 1931 the said sum of $1,593.63.

That thereafter, to wit, on or about the 12th day of June 1931 petitioner duly filed an application to the Commissioner of Internal Revenue, to wit, a claim for refund praying for the return of the said sum of $1,593.63 with interest upon the ground that there was no stamp tax liability incurred in respect of which the said tax had been collected from it. Said application was in all respects regular and in accordance with the law and regulations and was accompanied by all the evidence and proof of facts. The facts alleged in said application were not traversed or denied by the Secretary
5 of the Treasury or the Commissioner of Internal Revenue or by any representative of the United States. Although said application was in all respects complete and in due form, nevertheless, on or about the 10th day of November 1931, the Commissioner of Internal Revenue rejected and denied said application and has continuously denied and refused to pay your petitioner the moneys asked for and demanded, as aforesaid.

V

That thereafter, to wit, during the year 1931, the Commissioner of Internal Revenue demanded still further stamp taxes from petitioner upon the alleged claim that the Automatic Electric Washer Company had transferred, under said agreement, to its stockholders an alleged right of the said Automatic Electric Washer Company to receive the 34,538 shares of preference stock and 140,000 shares of common stock, referred to above. Acting under the alleged authority of Schedule A(3) of Title VIII of the Revenue Act of 1926, the Commissioner of Internal Revenue assessed against and demanded from petitioner the further sum of $4,020.46 as additional stamp taxes upon the ground above-mentioned.

That petitioner, under duress and threat of distraint did, on or about the 17th day of November 1932, under protest, pay to the Collector of Internal Revenue the sum of $4,020.46 above indicated.

That on or about the 31st day of March 1933, petitioner duly filed an application with the Commissioner of Internal Revenue, to wit a claim for refund, praying for the refund of $4,020.46, with interest, upon the ground that the alleged transaction, upon which the same was assessed and collected, did not create any liability for said
6 tax. Said application was in all respects regular and in accordance with the law and regulations and was accompanied by all the necessary evidence and proof of facts. The facts alleged in said application were not traversed or denied by the Secretary of the Treasury or the Commissioner of Internal Revenue or by any representative of the United States. Although said application was

in all respects complete and in due form, nevertheless, on or about the 13th day of June 1933, the Commissioner of Internal Revenue rejected and denied the said application and has continuously denied and refused to pay your petitioner the moneys asked for and demanded, as aforesaid.

VI

Your petitioner is advised by counsel and, therefore, avers that the stamp taxes in the sums of $1,593.63 and $4,020.46, respectively, collected from it, as above set out, were illegally and erroneously collected for the following reasons, to wit:

That Schedule A (3) of Title VIII of the Revenue Act of 1926 does not impose any liability for stamp taxes upon either (a) the alleged transfer to the said Nelson, under the circumstances above set out, of the alleged right of the stockholders of the Automatic Electric Washer Company to receive said stock or upon (b) the alleged transfer to the stockholders of the Automatic Electric Washer Company of the alleged right of the Automatic Electric Washer Company to receive said shares of stock from petitioner; that the said statute contains no authority for the assessment or collection of said taxes in either instance and that the same were illegally and unlawfully demanded and collected from petitioner over the protest in each instance of this petitioner.

7 VII

No action upon this claim other than herein set forth has been taken before Congress or any other of the Departments of the Government.

VIII

Your petitioner avers that there is justly due and owing it, on account of the matters hereinbefore set forth, the sum of $1,593.63, with interest from May 4, 1931, and the further sum of $4,020.46, with interest from November 17, 1932, after deducting all just offsets and payments on the part of the United States; that it is the sole owner of the claim herein sued upon, and that no assignment or transfer of the claim or any part thereof, or any interest in the same has been made; that it is a citizen of the United States and loyal to the United States Government and has not at any time aided or abetted in any manner or given comfort to any sovereign government that is, or ever has been, at war with the United States.

Wherefore, your petitioner prays judgment against the United States in the sum of $1,593.63, with interest from May 4, 1931, and the further sum of $4,020.46, with interest from November 17, 1932, until paid.

AUTOMATIC WASHER COMPANY,
By JESSE I. MILLER,
Attorney for Claimant.

8 [*Duly sworn to by Jesse I. Miller, jurat omitted in printing.*]

II. *General traverse*

Filed November 23, 1933

And now comes the attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANK J. WIDEMAN,
Assistant Attorney General.

III. *Argument and submission of case*

On April 8, 1936, the case was argued and submitted on merits by Mr. Jesse I. Miller for plaintiff, and by Mr. John W. Blalock for defendant.

9 IV. *Special findings of fact, conclusion of law, and opinion of the court by Booth, Chief Justice*

Filed June 1, 1936

Mr. Jesse I. Miller for the plaintiff.

Mr. J. W. Blalock, with whom was Mr. Assistant Attorney General Robert H. Jackson, for the defendant.

This case having been heard by the Court of Claims, the court upon a stipulation by the parties makes the following

Special findings of fact

1. Plaintiff, Automatic Washer Company, (hereinafter referred to as the "new company") is a corporation organized under the laws of the State of Delaware and having its principal place of business in the City of Newton, Iowa, where it is engaged in the business of manufacturing electric washing machines. Plaintiff's predecessor as owner of that business was Automatic Electric Washer Company, an Iowa corporation, hereinater reerred to as the "old company."

2. On June 22, 1928, one Harry E. Nelson, a stockholder and officer of the old company, entered into an agreement with Folds, Buck and Company, a corporation, hereinafter referred to as the "Bankers", the material portions of which were as follows:

10 That he (Nelson) proposes to cause a reorganization of the Old Company whereby a new corporation to be organized under the laws of the State of Delaware (hereinafter called the "New Company") shall acquire all of the properties and assets of the Old Company. Upon such reorganization having been effected, the capitalization of the New Company shall be as follows:

"Convertible preference stock, without any nominal or par value, authorized 40,000 shares; outstanding 40,000 shares;

"Common stock, without any nominal or par value, authorized 180,000 shares; outstanding 180,000 shares, of which 40,000 shares shall be in the treasury of the company.".

Upon such reorganization having been effected, Nelson will desire to sell to the Bankers, upon the terms and conditions hereinafter stated, 40,000 shares of said convertible preference stock and 40,000 shares of said common stock at the aggregate price of $1,000,000.

It is therefore agreed between the parties as follows:

Nelson hereby grants to the Bankers the option and privilege of purchasing 40,000 shares of said convertible preference stock and 40,000 shares of said common stock at the price aforesaid.

3. Pursuant to this agreement, the new corporation was organized and thereafter, about September 27, 1928, entered into an agreement with the old company, the material portions of which were as follows:

"Automatic Washer Company, a corporation of the State of Delaware, has been organized at the instance of the stockholders of the Old Company to acquire all the property and assets and assume all the obligations of the Old Company reflected by its balance sheet as of June 30, 1928, prepared and certified to by Arthur Anderson & Company, of Chicago, Illinois, and such obligations as have resulted from the usual and ordinary conduct of the business of the Old Company subsequent to June 30, 1928. * * *

"The capital stock of the Old Company and the New Company are as follows:

Automatic Electric Washer Co., Inc. (Old Company)

Authorized—	*Outstanding*
6,150 shares common stock (par value $100 per share)	3,412 shares

11 *Automatic Washer Company (New Company)*

Authorized—	*To be presently outstanding*
40,000 shares Convertible preference stock (without any nominal or par value)	40,000 shares
180,000 shares common stock (without any nominal or par value)	140,000 shares
(40,000 shares of common stock are to be reserved for the conversion of convertible preference shares).. * * *	

All of the property and assets of the Old Company shall be conveyed to the New Company, and the New Company shall assume all of the liabilities of the Old Company disclosed by its Balance Sheet as of June 30, 1928, a copy of which is appended to this plan and marked "Exhibit A", and such liabilities of the Old Company as have resulted from the usual and ordinary conduct of the business of the Old Company subsequent to June 30, 1928. The Old Company agrees that it has no other liabilities. As consideration for such conveyance of said property and asests, the New Company shall deliver to the stockholders of the Old Company the following securities of the New Company:

Convertible Preference Stock (without any nominal or par value)	34,538 shares
Common Stock without nominal or par value	140,000 shares

Immediately upon the conveyance of all of the assets of the Old Company to the New Company, the stockholders of the Old Company shall be in control of the New Company. * * *

As a part of the plan of reorganization, the stockholders of the Old Company have agreed among themselves that each will contribute the shares of convertible preference stock of the New Company received by such stockholder in his pro-rata proportion of 40,000 shares of the common stock of the New Company, and that the total shares so contributed, viz: 34,538 shares of Convertible preference stock and 40,000 shares of common stock, shall be sold and delivered to Folds, Buck & Co. Bankers, of Chicago, Illinois, under the provisions of the agreement of date June 22, 1928 (as amended from time to time), between H. E. Nelson (acting as agent for all of the stockholders) and said Bankers. In order to carry out this plan whereby the stockholders of the Old Company will sell and deliver to the said Bankers
said 34,538 shares of the convertible preference stock and 40,000
12 shares of the common stock of the New Company, each of the
stockholders of the Old Company has irrevocably constituted and appointed H. E. Nelson and W. N. Gallagher his attorneys in fact to receive the respective securities of the New Company to which such stockholder may be entitled and to make sale of that portion thereof to be contributed by such stockholder for the purpose of carrying out said agreement of sale with the Bankers and to receive the purchase price for all of said shares of stock so sold and delivered to the Bankers, and distribute to each of the stockholders of the Old Company his proportionate share of the proceeds of such sale, after deducting all expenses of the said attorneys in fact therefrom.

Accordingly, the New Company, in making delivery to the stockholders of the Old Company of the shares of stock agreed to be delivered as consideration for the acquisition of the property and assets of the Old Company shall issue such certificates in such names and for such amounts as shall be specified in the joint order of the said H. E. Nelson and W. N. Gallagher, the attorneys in fact for each of the stockholders of the Old Company, and deliver the same to said attorneys in fact, and certificates evidencing 34,538 shares of convertible preference stock and 40,000 shares of common stock shall be delivered by said attorneys in fact to or upon the order of Folds, Buck & Co., upon receipt of the sum of $868,912.00 (less the expenses to be deducted therefrom).

Upon the delivery by the said H. E. Nelson and/or W. N. Gallagher to said Folds, Buck & Co., of said 40,000 shares of Common Stock and said 34,538 shares of Convertible Preference Stock, and the receipt by the said H. E. Nelson and/or W. N. Gallagher of the said sum of $868,912.00 (less the expenses of Folds, Buck & Co., provided to be deducted), the said H. E. Nelson and/or W. N. Gallagher shall cause to be paid from the cash so received all expenses incurred by them and shall distribute to each stockholder of the Old Company for whom they have been so acting the following:

1. 1/3412 of the remaining cash for each share of Common Stock of the Old Company held by such stockholder.

2. 29.3 shares of Common Stock for each share of Common Stock held by such stockholder in the Old Company, being 1/3412 of the shares of stock distributable to the stockholders of the Old Company (other than shares so sold to Folds, Buck & Co., as aforesaid).

13 4. The powers of attorney referred to in Finding 3 were identically executed by all of the stockholders of the old company on September 17, 1928, the material portions thereof being as follows:

"KNOW ALL MEN BY THESE PRESENTS, That I, ——— ———, do hereby nominate and appoint H. E. Nelson and W. N. Gallagher my true and lawful attorneys for me and in my name, place, and stead, at a special meeting of the Stockholders of Automatic Electric Washer Co., Inc. (hereinafter called the "Old Company"), to be held at the office of the Old Company, in the City of Newton, Iowa, on the 27th day of September 1928, at ten o'clock a. m., and at any and all adjournments of said meeting to vote upon all the stock of the Old Company owned and/or controlled by me or standing in my name or which for any reason I am or shall be entitled to vote upon any and all questions, matters, and/or business which may come before said meeting and particularly to vote upon the following matters and things: * * *

"I do hereby authorize, direct, and require that my said attorneys or either of them receipt for and receive any and all dividends declared of the Old Company by way of liquidation or otherwise and to sell, exchange or dispose of, for me and in my behalf any and/or all property or assets so received, including all or any portion of the shares of stock or other securities of the New Company accruing to me, or to which I am or may become entitled by reason of the consummation of any plan of reorganization of the affairs of the Old Company and particularly I do hereby authorize and direct my said attorneys in fact to sell and dispose of any and/or all such shares of stock and/or securities in consummating the agreement or agreements now existing between the said H. E. Nelson and Folds, Buck & Company of Chicago, Illinois, as the same may from time to time be amended with the consent of the said H. E. Nelson.

"I do hereby declare that in consideration of H. E. Nelson having made an agreement or agreements with Folds, Buck & Co. of Chicago, Illinois, for my benefit and the benefit of the other stockholders of the Old Company, in reliance upon my promise to execute and deliver this proxy and power of attorney the same shall continue in full force and effect until November 15, 1928, and shall not be subject to revocation."

14 5. Pursuant to these several agreements and authorizations, the old company, about October 1, 1928, transferred and conveyed to the new company all its assets, subject to all its liabilities,

and the new company thereupon, issued 140,000 shares of its common and 34,538 shares of its convertible preference stock as follows:

"100,000 shares of common stock to the individual stockholders of the old company in the ratios of their respective stock holdings in the old company;

"40,000 shares of common stock to the said Harry E. Nelson, pursuant to said powers of attorney, of which 7,069 shares were said Nelson's pro rata portion, as a stockholder of the old company, of the new common stock to be sold to the Bankers; and

"34,538 shares of convertible preference stock to the said Harry E. Nelson pursuant to the said powers of attorney, of which 6,104 shares were said Nelson's pro rata portion, as a stockholder of the old company, of the new convertible preference stock to be sold to the Bankers."

6. Nelson thereupon sold and transferred to the Bankers the said 40,000 shares of common and 34,538 shares of preference stock, collected the proceeds thereof, and distributed the same among the stockholders of the old company.

7. Upon the original issue of the 140,000 shares of common and 34,538 shares of convertible preference stock, the new company duly paid the stamp tax imposed by Schedule A (2) of Title VIII of the Revenue Act of 1926 on each original issue of capital stock. It also duly paid the stamp tax imposed by Schedule A (3) of Title VIII on the subsequent transfer by Nelson to the Bankers of the 40,000 shares of common and 34,538 shares of convertible preference stock.

8. Thereafter the Commissioner of Internal Revenue demanded and collected from plaintiff, by threat of distraint and over plaintiff's protest, two additional stamp taxes on the foregoing transactions, alleged by him to be due and owing under Schedule A (3) of Title VIII upon the transfers of certain alleged rights to receive said shares of stock, viz:

(a) On November 17, 1932, a tax of $4,020.46 on the alleged
15 transfer by the old company to its stockholders of its alleged right to receive from the new company 140,000 shares of common and 34,538 shares of convertible preference stock, and

(b) On May 4, 1931, a stamp tax of $1,490.76 on the alleged transfer by the old stockholders to Nelson of their alleged rights to receive the 40,000 shares of common and 34,538 shares of convertible preference stock ultimately sold to the Bankers, and, in addition, a penalty of $74.54 and interest in the sum of $28.33, or a total of $1,593.63.

9. The validity of the tax of $4,020.46 referred to in Finding 8 (a), has been sustained by the Supreme Court of the United States in Raybestos-Manhattan Company v. United States, 296 U. S. 60, and plaintiff has abandoned and withdrawn its claim in respect of this item.

10. In respect of the item of $1,593.63, referred to in Finding 8 (b), plaintiff, on or about June 12, 1931, duly filed an application to the

Commissioner of Internal Revenue, to wit, a claim for refund, praying for the return of the sum of $1,593.63, with interest, which claim was rejected by the Commissioner of Internal Revenue on or about November 10, 1931, and no part of which has ever been allowed or paid.

11. Plaintiff is the sole owner of the claim herein sued upon, and no assignment or transfer thereof or any part thereof, or any interest in the same, has been made. Plaintiff is a citizen of the United States and loyal to the United States Government, and has not at any time aided or abetted in any manner or given comfort to any sovereign government that is or ever has been at war with the United States.

Conclusion of law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover the sum of $1,593.63 with interest.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one thousand five hundred and ninety-three dollars and sixty-three cents ($1,593.63), with interest at six percent per annum as provided by law.

16 *Opinion*

BOOTH, *Chief Justice*, delivered the opinion of the court:

The plaintiff, a Delaware corporation, sues to recover the amount of stamp taxes, interest, and penalty alleged to have been exacted by the Commissioner of Internal Revenue without warrant of law. The facts have been stipulated and no jurisdictional issue is involved.

The plaintiff is a successor corporation of the Automatic Electric Washer Company, (incorporated under the laws of Iowa, and the controversy to be adjudicated revolves around a reorganization of the Iowa company. In this opinion, following the findings, we will designate the Iowa corporation as the "old company" and the plaintiff as the "new company."

Harry E. Nelson, a substantial stockholder in the old company preliminary to the reorganization of the same on June 22, 1928, granted in a written agreement an option to Folds, Buck & Company, hereafter known as the "Bankers", to purchase 40,000 shares of the convertible preferred and 40,000 shares of the common stock of the new company when the same was incorporated.

Nelson's reorganization plan comprehended the purchase by the new company of all the assets of the old one. The sale was to be accomplished by the issuance by the new company of 40,000 shares of convertible preferred and 180,000 shares of common stock to be, less 40,000 shares of common reserved as Treasury stock distributed among the stockholders of the old company as their stock interest in the old company appeared.

The new company was duly incorporated and subsequent thereto, i. e. on September 27, 1928, by the terms of an express agreement, carried out Nelson's original plan of reorganization as evidenced by the agreement of June 22, 1928, except in determining the pro rata contribution by the stockholders of the old company to the stock to be sold to the Bankers, the amount of the preferred to be sold was reduced to 34,538 shares.

The agreement of September 27, 1928, contained a provision whereby H. E. Nelson and W. N. Gallagher or either one of them,
17 acting under duly executed powers of attorney from the stockholders of the old company, should receive from the new one certificates of stock therein in accord with the powers of attorney, to the extent of 34,538 shares of convertible preferred and 40,000 shares of common, which in turn were to be sold and transferred to the Bankers for the sum of $868,912 and the proceeds distributed by Nelson among the stockholders of the old company for whom he was acting as attorney in fact as their interest therein appeared. In other words, the September agreement ratified the one of June 22, 1928, with additional provisions essential to complete the reorganization.

The findings disclose the agreements and the form of the powers of attorney. Gallagher did not act thereunder. Nelson alone acted. The statutes and regulations governing the case are as follows:

Section 800 of the Revenue Act of 1926 provides that:

"On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title * * * the several taxes specified in such schedule. * * *"

Schedule A (3) reads as follows:

"3. Capital stock, sales, or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock * * * or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share; * * *."

Regulation 71, relating to stamp taxes on documents imposed by the Revenue Act of 1926 and the Revenue Act of 1928, contains the following provisions:

18 "ART. 31. BASIS OF TAX.—Every transfer or sale of stock, either before or after issuance of a certificate, is taxable. The tax accrues at time of making the sale * * * or delivery

of or transfer of the legal title to shares, or certificates of stock * * * or of the right to subscribe for or to receive such shares or certificates, regardless of the time or manner of the delivery of the certificates, or agreement or memorandum of sale.

"ART. 34. SALES AND TRANSFERS SUBJECT TO TAX.—The following transactions are subject to the tax:

"(a) The sale, or transfer, or change of ownership, of certificates of stock, or of profits, or of interest in property or accumulations in corporations, joint-stock companies, or associations.

"(b) The sale or transfer of shares of stock, whether or not represented by certificates.

"(c) The transfer of stock to or by trustees."

* * * * * * *

"(g) The transfer of the interest of a subscriber for stock, however such interest may be evidenced or conditioned upon further payments.

"(h) The transfer of the right to subscribe for stock in any corporation, joint-stock company, or association, whether or not evidenced by warrants.

* * * * * * *

"(t) The transfer of the right to receive stock which a corporation has unconditionally agreed to issue.

"(u) Transfers of stock are subject to the tax even though the holders thereof are not entitled in any manner to the benefit of the stock."

The process of completing the reorganization of the companies exacted, as stipulated by the parties, stamp taxes on first, the original issue of all the stock issued by the new company, second on the old company's transfer of its right to receive the new company's stock, third, on Nelson's transfer of the stock coming to him under the power of attorney to the Bankers, and, finally, upon the Bankers' sale of the stock to the public. With respect to these transactions the proper stamp taxes were fully paid.

The defendant contends that inasmuch as the new company was obligated to and did issue 100,000 shares of its common stock directly to the stockholders of the old company in the ratio of their respective holdings, and 40,000 shares of common stock, together with 34,538 shares of preferred stock, to Nelson, acting as attorney in fact
19 for the stockholders legal title to the last-named shares vested in Nelson. Therefore, the right to receive the stock Nelson sold to the bankers had to be transferred to Nelson in order to execute the sale to the bankers.

The argument advanced overlooks the decision of the Supreme Court in the case of Raybestos-Manhattan Co. v. United States, 296 U. S. 60. The right to receive the stock of the new company was under the foregoing decision vested in the old company, and upon the transfer of this right to its stockholders the old company paid a stamp tax of $4,020.46, which the plaintiff now concedes it may not recover.

The findings conclude the plaintiff's right to recover a judgment. The status of the transaction clearly shows that what the stockholders of the old company did was to appoint an intermediary, an agent in fact, acting under powers of attorney, to execute for them a pre-existing agreement to sell to the bankers the stock involved. This the attorney did, and upon the transfer of said stock paid the stamp tax exacted under the revenue act. National Bond and Share Corporation v. Hoey, 364 CCH, p. 9755.

Nelson, the stockholders' attorney in fact, owned in his own right 7,069 shares of common and 6,104 shares of preferred stock in the new company, i. e., he received this stock as his pro rata portion of the new stock because of his stock ownership in the old company, and this block of stock represented his contribution to the total amount of stock sold to the bankers. The defendant concedes that in no event would Nelson be taxable under the contention in this case.

The plaintiff is entitled to a judgment as follows: $1,490.76 tax paid, to which was added $74.54 penalty and $28.33 interest, totalling $1,593.63, with interest as allowed by law. It is so ordered.

WHALEY, Judge; WILLIAMS, Judge; LITTLETON, Judge; and GREEN, Judge, concur.

20 V. *Judgment*

At a Court of Claims held in the City of Washington on the 1st day of June A. D. 1936, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover the sum of $1,593.63 with interest.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one thousand five hundred ninety-three dollars and sixty-three cents ($1,593.63), with interest at six per cent per annum as provided by law.

21 [Clerk's Certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1936

Supreme Court of the United States

Order allowing certiorari

Filed October 19, 1936

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○